

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
UNITED STATES OF AMERICA : 08-CR-76
-against- : U.S. Courthouse
: Brooklyn, New York
CHARLES CARNEGLIA
Defendant :
January 22, 2009
----- X 2:00 p.m.

BEFORE:

HONORABLE JACK B. WEINSTEIN
United States District Judge

APPEARANCES:

For the Government: BENTON J. CAMPBELL, ESQUIRE
United States Attorney
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Court Reporter: RONALD E. TOLKIN, RMR
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1 THE COURT: I'm sorry, Counsel. There was other
2 work keeping me.

3 MR. BURLINGAME: Hello, Judge.

4 THE COURT: Hello.

5 MS. SHARKEY: Good afternoon, Your Honor.

6 THE COURT: Good afternoon. Call the case.

7 THE CLERK: Criminal cause for trial, U.S.A. versus
8 Charles Carnegie.

9 MR. BURLINGAME: Roger Burlingame and Marisa Seifan
10 for United States of America.

11 MS. SHARKEY: Kelly Sharkey for Mr. Carnegie.

12 MR. FARBER: Curtis Farber for Mr. Carnegie.

13 THE COURT: The defendant is present.

14 Have you agreed upon which ones should be eliminated
15 by consent?

16 MR. BURLINGAME: We have, Judge.

17 MS. SHARKEY: Yes.

18 THE COURT: Read the numbers.

19 MR. BURLINGAME: Do you want me to?

20 MS. SHARKEY: Do you have it chronologically?

21 MR. BURLINGAME: I do.

22 MS. SHARKEY: Okay.

23 MR. BURLINGAME: 6, 9, 15, 19, 22, 24, 28, 37, 43 --

24 Am I going too fast?

25 MS. SHARKEY: No.

1 MR. BURLINGAME: 51, 52, 55, 56, 58, 59, 63, 64, 67,
2 69, 72, 73, 74, 78, 86, 87, 91, 92 --

3 MS. SHARKEY: I'm sorry. Mr. Burlingame, did you
4 say 72?

5 MR. BURLINGAME: Yes.

6 MS. SHARKEY: Thank you.

7 MR. BURLINGAME: 95, 96, 97, 103, 104, 109, 111,
8 112, 115, 117, and 119.

9 THE COURT: How many is that in total?

10 MR. BURLINGAME: Hold on one second, Judge.

11 THE COURT: We distributed how many questionnaires?

12 MR. BURLINGAME: 200.

13 THE COURT: No.

14 MR. BURLINGAME: Oh, 120 were reviewed.

15 THE COURT: 120?

16 MS. SHARKEY: 39 Judge.

17 THE COURT: What?

18 MS. SHARKEY: There are 39 in total here.

19 MR. FARBER: I have 38.

20 MS. SHARKEY: 38. I am sorry.

21 THE COURT: So I have excused approximately 80?

22 MR. BURLINGAME: Correct.

23 THE COURT: And you are now consenting to?

24 MS. SHARKEY: 38.

25 MR. BURLINGAME: 38.

1 THE COURT: 158 out of 200.

2 MR. BURLINGAME: No, Judge. I think it's -- the
3 total number of excused would be 118 so far. So that would be
4 about 82 left.

5 THE COURT: I'm sorry. You're right.

6 38. So it is 82.

7 MR. BURLINGAME: 82 left, yes. That's right. The
8 parties have agreed to 38.

9 THE COURT: So we are now down to 82.

10 MR. BURLINGAME: It was 118; so we are down to 82.

11 THE COURT: Okay. We still have more than enough.
12 Now, what are the disputes?

13 MR. BURLINGAME: There are a number that we feel
14 should be released for cause. I am happy to go through them.
15 The defense can go first, whichever you prefer.

16 MS. SHARKEY: Will you do 1 through 25?

17 THE COURT: Give me the numbers that you want
18 excused --

19 MS. SHARKEY: Okay.

20 THE COURT: -- and that the Government does not.

21 MS. SHARKEY: Okay. Juror 3.

22 THE COURT: Juror 3.

23 What is the problem?

24 MS. SHARKEY: It's question --

25 Charles, can you switch with Curtis for just a

1 minute?

2 MR. FARBER: Do you want me to do the first one?

3 MS. SHARKEY: Yes. Why don't you do the first one.

4 MR. FARBER: Okay. If Your Honor pleases, we have

5 broken it down into groups. So if I can do the first few.

6 Number 3 is Questions 49, 54, 57J, and 58G.

7 THE COURT: Number 49?

8 MS. SHARKEY: Yes. Then it would be --

9 MR. BURLINGAME: We're starting with Question 49 on
10 Number 3.

11 MS. SHARKEY: No. We're starting with Question 54.

12 THE COURT: 49 is the first question?

13 MR. FARBER: No. I am sorry.

14 THE COURT: Juror Number 3 is the we are talking
15 about?

16 MR. FARBER: Right.

17 THE COURT: What question are you bringing up?

18 MR. FARBER: I am sorry, Judge. One second, please.
19 It was Question 57.

20 THE COURT: Question 57?

21 MR. FARBER: Yes. 57J.

22 THE COURT: 57 and 58?

23 MR. FARBER: No. 57J, as in Juliette.

24 MS. SHARKEY: And that would be on Page 27 of the
25 questionnaire, Your Honor.

1 THE COURT: Denied.

2 MR. FARBER: And then there is also 58D.

3 THE COURT: D?

4 MR. FARBER: Yes.

5 THE COURT: When you use a letter like this it is
6 hard to understand.

7 MR. FARBER: Okay. D, as in David, Your Honor.

8 THE COURT: Denied.

9 Next.

10 MS. SHARKEY: And, Judge, so we understand the
11 process, when they come in -- when that juror comes in on
12 Monday can we request that the Court follow up on that
13 question --

14 THE COURT: Yes.

15 MS. SHARKEY: -- with the juror?

16 THE COURT: Yes.

17 MS. SHARKEY: Okay.

18 MR. BURLINGAME: And just to clarify now, would you
19 like the parties to submit questions or just questions you
20 would like to follow up on, or how would you like that to
21 work?

22 THE COURT: Any way that you want. It is preferable
23 if you have particular questions as to the juror. So if
24 Number 3 comes up, question the juror as to this and this and
25 this about this and this so we don't have a lot of hemming and

1 hawing.

2 MR. BURLINGAME: Great.

3 THE COURT: I expect you then to have, with respect
4 to every juror that has not been excused for cause, a
5 statement of an objection for cause or an objection that you
6 want to explore for peremptory purposes before me so I can
7 proceed.

8 Is that clear to all of you?

9 MR. FARBER: Yes.

10 MR. BURLINGAME: I guess just one question.

11 We will do -- once we -- will we go through the
12 panel and then do the peremptories at the end once we --

13 THE COURT: We will go through the whole -- whoever
14 is left. When I have about 45 that I consider sufficient,
15 I will seat them in the box.

16 MR. BURLINGAME: And then you will --

17 THE COURT: And then you will see the rest of them,
18 the rest of those 45 laid out. And we will go through the
19 peremptories very quickly, and then we will go through the
20 alternates very quickly. The defendants will have ten; the
21 Government six, as I think the statute and the rules provide
22 with respect to the jury itself.

23 Once the 12 of six, I will select six alternates.
24 You each have one challenge for every two, which will mean
25 that for the alternates there will be three challenges on each

1 side. And we will do it in waves. The first challenge will
2 be two by the defendants, one by the Government, et cetera.
3 You can waive at any level, but you don't give up the rest of
4 your challenge.

5 MS. SHARKEY: And when you say that -- can I just
6 ask for a clarification.

7 You mean on the main jury you can have the defense
8 on the entire jury chronologic- -- we're proceeding 1 through
9 12 or 1 through 45?

10 THE COURT: Well, we'll -- the numbers will be
11 randomized.

12 MS. SHARKEY: Yes.

13 THE COURT: We will put them in the jury box, the
14 lowest number first that I approve. And I will be approving
15 them in the little room -- the jury room next to the
16 courtroom. When we have the 12 seated, I will proceed with
17 the six alternates. We will have a full box then of 12 plus
18 six.

19 We will then proceed with challenges. The first
20 wave of challenges will be two defendant, one Government. If
21 all three of you exercise against -- and will be exercising
22 against the 12 only, not the alternates. If all three are
23 excluded on peremptories, they will be removed from the jury,
24 and the next lowest number outside the box will fill in, and
25 so on and so on.

1 Do you understand?

2 MS. SHARKEY: I do.

3 Can we -- for instance, if we exercise challenges
4 against Juror 1 and 2 or -- or -- forgive me. 11 and 12, can
5 we go back on the next round and go back to one and two?

6 THE COURT: Of course.

7 MS. SHARKEY: You don't care? Okay.

8 THE COURT: Yes.

9 MS. SHARKEY: Okay.

10 THE COURT: Otherwise it wouldn't makes much sense.

11 MS. SHARKEY: Okay.

12 THE COURT: All right. Next.

13 MR. FARBER: With respect to Juror Number 4.

14 THE COURT: I assume that the defendant does not
15 wish to be at the sidebar while you are exercising; is that
16 correct?

17 MR. FARBER: That is correct, Your Honor.

18 MS. SHARKEY: That is correct.

19 THE COURT: Go ahead.

20 MR. FARBER: With respect to Juror Number 4,
21 starting with Question Number 57J, as in Juliette.

22 THE COURT: What page?

23 MR. FARBER: That is Page 27.

24 THE COURT: All right. Next.

25 MR. FARBER: Number 61. That is Page 29, Your

1 Honor.

2 THE COURT: Denied.

3 MR. FARBER: Number 74 on Page 32.

4 THE COURT: And what is your objection?

5 MR. FARBER: Judge, my argument would be with this
6 particular juror it is cumulative --

7 THE COURT: No. I don't need your argument. I want
8 the Government's.

9 MR. BURLINGAME: Judge, I think obviously there are
10 some problematic answers here, and the question just would be
11 whether in the voir dire the Judge says would you be able to
12 following the instructions of the Court and decide the case
13 based solely on the evidence if this is --

14 THE COURT: Denied.

15 MR. FARBER: Judge, the same juror again, also
16 Question Number 88. It just is an accumulation of his
17 responses indicating -- those four responses indicating that
18 he cannot be fair. That he has a bias.

19 THE COURT: He said if he is from the Mafia he is
20 guilty.

21 MR. BURLINGAME: That is what we are going to prove.

22 THE COURT: He doesn't say that he is guilty.

23 MR. FARBER: The next juror would be Number 7.

24 THE COURT: Yes.

25 MR. FARBER: Question Number 74 on Page 32.

1 MR. BURLINGAME: I'm sorry. Which question was
2 that?

3 MR. FARBER: 74.

4 THE COURT: Not sure. I will allow it.

5 MR. FARBER: Question Number 76.

6 THE COURT: Not sure. I will deny it.

7 MR. FARBER: Question Number 84.

8 THE COURT: 84.

9 MR. FARBER: Oh, I am sorry. 84B.

10 THE COURT: Denied.

11 MR. FARBER: 85.

12 THE COURT: Denied.

13 MR. FARBER: And 86.

14 THE COURT: Denied. He is just not sure.

15 Next.

16 MR. FARBER: Juror Number 10.

17 THE COURT: You should be looking at a questionnaire

18 so you are following what we are doing here. Pick up a
19 questionnaire and look through it to see what we are doing.

20 Go ahead.

21 MR. FARBER: Question Number 73.

22 THE COURT: They said no, but sometimes they are
23 confused by the question. I will deny it.

24 MR. FARBER: And the next one will be Juror
25 Number 12.

1 THE COURT: The question?

2 MR. FARBER: One second, please.

3 Question Number 61 is just not responded to.

4 THE COURT: That is not a sufficient reason.

5 MR. FARBER: Number 76 on Page 33.

6 THE COURT: It says, "Why not speak unless you have
7 something to hide?" We will have to question them further on
8 that. Denied.

9 MR. FARBER: The next one would be Juror Number 17,
10 starting with Question 13. The reason that I bring that up,
11 I believe this juror has a language barrier. The answer
12 doesn't apply to the question, and then there are no answers
13 to the majority of the questionnaire. The juror simply
14 stopped answering. There are no answers for Question 60, 68,
15 72 through 78, and 81 through 89.

16 THE COURT: Yes, excused. He doesn't help us by
17 answering the questionnaire I don't want him.

18 MR. BURLINGAME: Yes, Your Honor.

19 MR. FARBER: The next one would be Juror Number 21,
20 Question Number 67.

21 THE COURT: He thinks that it is something that will
22 affect his ability to be fair and impartial. I will have to
23 question him about that.

24 MR. FARBER: Okay.

25 THE COURT: Denied.

1 MR. FARBER: The next one will be Juror Number 30,
2 Question Number 61.

3 THE COURT: If the evidence showed clearly that the
4 defendant was a member of organized crime I would think there
5 may well be proof. No. Denied.

6 MS. SHARKEY: 42, Your Honor. Throughout this
7 questionnaire the juror says or implies that she would not be
8 able to be fair if the defendant was charged with drug
9 trafficking. And that appears in Question 72 and 61.

10 THE COURT: He says drug trafficking bothers me.
11 That doesn't mean he will not be a fair juror.

12 MS. SHARKEY: Also going to Question 267. She is
13 very involved in school and community programs that make her
14 children aware of drugs. And that is in her answer. That is
15 in response to the question, "Is there anything about the
16 nature of the charges that would affect your ability to be
17 fair and impartial?"

18 "ANSWER: Yes."

19 THE COURT: Denied. It doesn't mean she can't be
20 fair.

21 Next.

22 MS. SHARKEY: Questionnaire 43.

23 THE CLERK: 43?

24 MS. SHARKEY: Yes. Q60 --

25 LAW CLERK: One second.

1 MR. BURLINGAME: I think 43 was already taken out on
2 consent.

3 MS. SHARKEY: Thank you.
4 Questionnaire 49, Your Honor.

5 THE COURT: Yes.

6 MS. SHARKEY: Question 57.

7 THE COURT: 57?

8 MS. SHARKEY: 57J. "Have you formed an opinion
9 about the case based on anything that you have seen heard or
10 read?"

11 "Yes. He is probably guilty."

12 THE COURT: I will have to question him further on
13 it. Denied.

14 MS. SHARKEY: Questionnaire 53, Question 61.

15 THE COURT: 61.

16 MS. SHARKEY: The question, "Would the fact that the
17 defendant is accused of being a member of organized crime make
18 it difficult for you to fairly and impartially decide whether
19 or not he is guilty or not guilty?"

20 "ANSWER: Yes. Guilty by association."

21 THE COURT: Denied. I will question that juror on
22 it.

23 MS. SHARKEY: Questionnaire 62, Question 58D.

24 MR. BURLINGAME: D, as in David.

25 MS. SHARKEY: I will check it.

1 THE COURT: D, as in David.

2 "Organized crime means to me most probably they are
3 criminals."

4 Is that the only one?

5 MS. SHARKEY: Yes.

6 THE COURT: That objection is denied. I will
7 question the juror.

8 MS. SHARKEY: Questionnaire 85, Question 74.

9 THE COURT: 74?

10 MS. SHARKEY: Yes, Judge.

11 That requires a follow-up. The question is "Can you
12 presume him to be innocent?"

13 And the individual, who appeared to understand all
14 of the previous questions, indicated that the presumption of
15 innocence doesn't apply. It is not applicable.

16 THE COURT: Denied. I will question him about it.

17 MR. FARBER: The next one, Judge, would be Juror
18 Number 98. And that would be Question Numbers 1 and 72. It
19 is the same response about language difficulty.

20 MR. BURLINGAME: Judge, if I can be heard on that.

21 THE COURT: Denied. The answers seem to be quite
22 clear.

23 MS. SHARKEY: Questionnaire 101, Judge. Again, it
24 is back to 74, where the juror says that he cannot presume
25 Mr. Carneglia to be innocent of the charges.

1 THE COURT: We will have to find out --

2 MS. SHARKEY: That is Page 32.

3 THE COURT: -- what he means and whether he will
4 follow my instructions. Denied.

5 MR. FARBER: Judge, with respect to Juror
6 Number 106 -- 106, Question Number 61 on Page 29.

7 THE COURT: "If the defendant is shown to be a
8 member of organized crime it would be difficult to presume
9 innocence." Denied.

10 MR. FARBER: And Question Number 74 on Page 32.

11 THE COURT: He says he can't presume the defendant
12 is innocent.

13 MR. FARBER: Explanation on the following page, at
14 the top of Page 33.

15 THE COURT: Thank you.

16 He says he is afraid he might be biased. I will
17 question him about it.

18 MS. SHARKEY: Judge, on Monday you would like us to
19 give you a list of all of the follow-up questions with the
20 jurors and identify --

21 THE COURT: By juror.

22 MS. SHARKEY: Okay.

23 MR. FARBER: Just quote the question number or do
24 you want actual questions posed?

25 THE COURT: Either way. Whatever you think would be

1 most helpful --

2 MS. SHARKEY: Okay.

3 THE COURT: -- in getting your view across.

4 MS. SHARKEY: Okay.

5 MR. FARBER: That is it for the defense objections
6 for cause, Your Honor.

7 THE COURT: Okay.

8 MR. BURLINGAME: For Juror Number 27.

9 MR. FARBER: Which number?

10 MS. SHARKEY: 27.

11 MR. BURLINGAME: Question 84, which is Page 36.

12 THE COURT: And this says, "With respect to people
13 who have committed crimes and the witnesses, all guilty
14 parties should do time. A person who cuts a deal carries no
15 weight with me."

16 Well, when I explain it they may change their view.
17 Denied.

18 MR. BURLINGAME: One moment, Your Honor.

19 Juror Number 8, Question 59.

20 THE COURT: He has a relationship with the
21 Godfather, who is an uncle?

22 MS. SHARKEY: No.

23 MR. BURLINGAME: I think his Godfather and his
24 uncles were uncles. It's unclear.

25 THE COURT: People who have a familial relationship,

1 I have to exclude a large part or portion of the population
2 then.

3 MR. BURLINGAME: Yes, Judge.

4 Question 30 -- I'm sorry. Juror Number 34.

5 THE COURT: Question.

6 MR. BURLINGAME: Question 60.

7 THE COURT: Wouldn't be capable of considering these
8 crimes in accordance with the instructions of the Court. I
9 will ask and find out about that.

10 MR. BURLINGAME: Yes, Your Honor.

11 THE COURT: Denied.

12 MR. BURLINGAME: One second, Judge.

13 THE COURT: Take your time.

14 MR. BURLINGAME: Juror 81.

15 MS. SHARKEY: Do we have it.

16 THE COURT: The question?

17 MR. BURLINGAME: Question 84, both parts A and B,
18 primarily B.

19 THE COURT: "Witness who committed crimes against A,
20 if their crimes are just as bad it makes evidence hard to
21 believe." I can't excuse him for that.

22 And, "B, if you have feelings about a witness
23 seeking a reduced sentence."

24 Yes. I will have to question him further.

25 MR. BURLINGAME: Well, just on the top of the next

1 page they say, "Unfair to the victims."

2 THE COURT: I understand that.

3 MR. BURLINGAME: Okay.

4 THE COURT: I will question them.

5 MR. BURLINGAME: This was my favorite answer from
6 the jury questionnaire review for Juror 100.

7 THE COURT: Yes.

8 MR. BURLINGAME: There are a series of questions,
9 but the Question 66 sums it up.

10 THE COURT: "Any reason you might fail to fairly and
11 impartially evaluate all of the evidence?"

12 "I am chicken."

13 MR. BURLINGAME: There is just a number of questions
14 where they say that they will have a hard time being fair and
15 impartial, and the reason there is fear.

16 THE COURT: I will question them. Chicken has a lot
17 of connotations.

18 MR. BURLINGAME: Juror 44. I can just describe it
19 to you. You may have ruled on this.

20 MS. SHARKEY: The question?

21 MR. BURLINGAME: It was the organized crime
22 question, Question 59.

23 THE COURT: Question 59?

24 MR. BURLINGAME: Yes.

25 THE COURT: "My wife's uncle was reputed to have

1 associated with the boys from Mulberry Street. I worked with
2 a person whose father was reputed to be a cappo in the
3 Gambino."

4 No. That is not enough.

5 MR. BURLINGAME: That is it for us, Judge.

6 THE COURT: Okay. So how many did we take out?

7 THE CLERK: One.

8 THE COURT: I thought it was more.

9 MR. BURLINGAME: One juror, 17.

10 THE COURT: Was that the only one?

11 MR. FARBER: Yes, sir.

12 THE COURT: Okay. One by the Court. That leaves us
13 with 81.

14 When they call in, will you, based on what we have
15 done this afternoon, be able to tell these jurors to come in?

16 THE CLERK: Yes, Your Honor.

17 THE COURT: I want them in at 9:30 on Monday. I
18 think we should be able to get 40 by the morning and the --
19 for cause on the basis of individual questions. And the
20 peremptories -- peremptory challenges will take no more than
21 an hour, probably a half an hour. So we should -- if we start
22 early, we should finish by the end of the day.

23 And then you want Tuesday off.

24 MR. BURLINGAME: Yes. We do have our witnesses
25 lined up for Wednesday.

1 THE COURT: And then we will start Wednesday.

2 MS. SHARKEY: Okay. So we're -- you -- we will get
3 through the whole jury on Monday if we --

4 THE COURT: I hope.

5 MS. SHARKEY: Okay.

6 THE COURT: What I will do, as I said, is select 12
7 plus six alternates, and I will hold six additions in reserve
8 just in case we are disappointed by one juror or an alternate
9 or two not showing up on Wednesday.

10 MS. SHARKEY: Oh, you are just going to hold them
11 through Wednesday and then release them?

12 THE COURT: Then release them.

13 MS. SHARKEY: Will we be exercising challenges
14 against the plus six, the second set of six?

15 THE COURT: No.

16 MS. SHARKEY: Okay.

17 THE COURT: I don't think so. We could do it if you
18 like. That means that we have to put about 46 instead of 40.
19 It will take a little longer. Let's see how it goes.

20 MS. SHARKEY: Whatever the Court --

21 MR. FARBER: In terms of voir dire, is it -- the
22 Court going to conduct the entire voir dire?

23 THE COURT: Yes. Well, I will turn to you, if you
24 have any other question you write it out and give it to me.
25 We will sit in the jury room, the defendant present. If the

1 press wants to be present, they can be, or any member of the
2 public can be. That is part of the public trial.

3 And the jury comes in at 9:30. They will be seated
4 by Ms. Lowe in the spectator section of the courtroom, and I
5 will select the jurors and place them in the jury box, as I
6 indicated, and have the others lined up in the back.

7 MS. SHARKEY: Okay. So you are going to bring them
8 in one by one?

9 THE COURT: Correct.

10 MS. SHARKEY: Okay.

11 THE COURT: I prefer to do that so there is no
12 prejudice of the entire panel.

13 Anything further? Any questions?

14 MR. BURLINGAME: No, Your Honor.

15 MS. SHARKEY: Not on the jury matter. There are
16 some outstanding issues.

17 THE COURT: All right. Go ahead.

18 MS. SHARKEY: I had spoken with Mr. Burlingame about
19 this issue.

20 MR. BURLINGAME: I don't know if you checked your
21 e-mail. It is ready for you.

22 MS. SHARKEY: Good.

23 THE COURT: What is the question?

24 MS. SHARKEY: It has been resolved, but I will
25 inform the Court?

1 THE COURT: If it has been resolved, then I don't
2 want to hear about it.

3 MS. SHARKEY: Thank you.

4 MR. BURLINGAME: Yes.

5 MS. SHARKEY: Judge, I also filed an e-mail both to
6 your chambers and to Mr. Burlingame yesterday a request for an
7 order on certain public documents of one of the cooperating
8 witnesses that the Government intends to call at trial. This
9 is an individual who was charged, pled guilty, was sentenced,
10 and subsequent to serving part of their sentence become a
11 cooperating witness against Mr. Carneglia.

12 The individual's name is Hunter Adams. Mr. Adams's
13 case file was transferred to the central holding area of
14 cases, I guess which is out in the midwest. We have made
15 efforts to obtain it, not successfully. I have requested
16 that --

17 THE COURT: The case file?

18 MS. SHARKEY: Yes.

19 THE COURT: Do you have the number of the case?

20 MS. SHARKEY: I do.

21 THE COURT: Ms. Lowe, would you take this and have
22 the Clerk of the Court ask for expedition?

23 THE CLERK: Okay.

24 THE COURT: Probably that is the easiest way unless
25 you have it already.

1 MR. BURLINGAME: We don't have it already, but I
2 would ask that we be able to look at it first. The entire
3 case file will obviously contain, you know, attorney-client
4 privilege communications and other --

5 MS. SHARKEY: Well, we are looking for public
6 documents --

7 MR. BURLINGAME: Oh, public documents.

8 MS. SHARKEY: -- that were posted on ECF.

9 MR. BURLINGAME: Oh, then we obviously don't have a
10 problem with that.

11 THE COURT: All right. Give Ms. Lowe the name of
12 the case, et cetera, and the details that you need to Ms. Lowe
13 and have of the Clerk of the Court ask for it immediately on
14 an expedited basis. That is the best way to get it, I think.

15 MS. SHARKEY: Fair enough.

16 MR. BURLINGAME: And I would just request that it is
17 clear on the face of the request that it is public documents
18 only so there is not a confusion.

19 THE CLERK: If they are not sealed, there is no
20 difference in the documents.

21 MR. BURLINGAME: Right.

22 But if what is being requested is the
23 U.S. Attorney's files --

24 Is that what we are talking about?

25 THE CLERK: No.

1 THE COURT: No. The court records.

2 MR. BURLINGAME: The court records. I am sorry.

3 MS. SHARKEY: I also filed a motion, and I filed it
4 under seal. I don't know if you intend to answer that motion.

5 MR. BURLINGAME: We do.

6 MS. SHARKEY: Okay.

7 THE COURT: Which is the motion?

8 MS. SHARKEY: It's a motion to preclude one of the
9 cooperating witnesses from giving certain testimony at trial.
10 I have a copy if the Court wants it. It is one of the
11 Government's we anticipate main cooperators who executed a
12 plea agreement with the Government concerning jury tampering
13 in previous trials. Our position is that we have plenty to
14 cross-examine this witness on. We do not need to confront him
15 with those convictions; that those convictions will, in fact,
16 prejudice this jury, which is an anonymous jury, which we
17 objected to.

18 He was not charged with jury tampering until he
19 became a cooperating witness. Those were not pending charges
20 for which he was I believe initially picked up or reached out
21 to when he was in jail on another matter. I don't see -- we
22 think that this should be excluded under 404.

23 THE COURT: That what should be excluded?

24 MS. SHARKEY: Any testimony by this witness.

25 THE COURT: On direct?

1 MS. SHARKEY: On direct or cross. We won't cross
2 him on it if it is not brought out on direct.

3 THE COURT: Well, the Government has tentatively a
4 right to show how disreputable their witnesses are.

5 Do you want to use that?

6 MR. BURLINGAME: We do, Judge. I mean, if you would
7 like further briefing, we can explain, but it is part and
8 parcel of how he had become so close to the defendant.

9 THE COURT: I will allow it.

10 MS. SHARKEY: Respectfully, Judge, the whole issue
11 of the anonymous jury that is in play here, that -- that will
12 do nothing.

13 THE COURT: That -- there is no the anonymous jury
14 in play so far as the jury is concerned.

15 MS. SHARKEY: I understand that, Judge. But
16 certainly I don't see how that sort of testimony does anything
17 except prejudice the jury against Mr. Carneglia in a way that
18 does not afford him to have a fair trial. It certainly takes
19 the focus away.

20 THE COURT: Well, if you wish -- if you wish to
21 write out the instructions to the jury that adverse
22 information about the witness is for credibility only, and it
23 was not evidence of any act of the defendant as to this.

24 MS. SHARKEY: The witness is going to link that to
25 Mr. Carneglia, and Mr. Carneglia is not charged with that in

1 neither the indictment nor the 404(b).

2 MR. BURLINGAME: No. It is not going to link
3 Mr. Carneglia to it. That is incorrect. The defendant's own
4 bad acts -- I mean the witness's own bad acts.

5 MS. SHARKEY: And, Judge --

6 THE COURT: Well, I don't see what basis I have
7 information preventing the Government from blackening its own
8 witnesses.

9 MS. SHARKEY: Well, their attempt to blacken their
10 own witness is to taint this jury. And under 404 you
11 certainly have the ability --

12 THE COURT: 403.

13 MS. SHARKEY: 403. Thank you.

14 -- to preclude introduction of that. I would
15 request that before the Court rule it review the papers.

16 THE COURT: I have read your brief.

17 MS. SHARKEY: Oh, you did?

18 THE COURT: You supplied it to me.

19 MS. SHARKEY: Okay.

20 THE COURT: It's a very fine brief.

21 MS. SHARKEY: A very brief brief.

22 THE COURT: It doesn't really support the authority.
23 That doesn't mean that your view is incorrect. I don't think
24 there is any authority for it. We'll look at it.

25 MS. SHARKEY: Thank you, Judge.

1 THE COURT: The Government has an obligation to
2 inform the Court. But, in general, the Court's view is that
3 each side should be permitted to put in its case subject to my
4 limiting them putting in this case.

5 MS. SHARKEY: Okay.

6 THE COURT: Okay. Anything further?

7 MS. SHARKEY: No.

8 MR. BURLINGAME: Thank you, Judge.

9 THE COURT: I will see you all 9:30 on Monday.

10 MS. SHARKEY: Thank you, Judge.

11 (Matter concluded at 3:20 p.m.)
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